

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

40372

FILE: B-179098

DATE: January 24, 1974

MATTER OF: The Transport Tire Company .

DIGEST: Finding that low bidder was nonresponsible for lack of tenacity and perseverance was not improper in view of fact that at time contracting officer made his determination reported work under past contracts with bidder involved deficient workmanship and late pickups and deliveries under contracts.

No objection can be taken for failure to forward question of bidder's responsibility to SBA because at time nonresponsibility determination was made Government had no contract for services, notwithstanding Government's urgent need for services, and withholding award would have meant extending previous contract with bidder whose services contracting officer had found to be unacceptable.

The bid of the Transport Tire Company (Transport Tire) was rejected, under solicitation No. GS-08-DP(P)-10038, issued by Region 8, General Services Administration (GSA), by the contracting officer because he determined, in part, that Transport Tire was a nonresponsible bidder due to the lack of tenacity and perseverance the firm had shown while performing its two previous contracts for this work with Region 8. Under the first contract, covering the period of May 4, 1971, to May 31, 1972, various tires delivered by Transport Tire were found to be of insufficient skid depth. While only one Region 8 installation, the Air Force Academy, officially rejected tires for this insufficiency, both Region 9 and Region 10 indicated that they also were having the same problem with the contractor. The Air Force Academy also reported that Transport Tire was making late pickups and deliveries of tires from and to that installation. Transport Tire, warned by Region 8 that these deficiencies were unacceptable, repeatedly gave assurances that the deficiencies would be corrected.

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Under the second contract, covering the period of June 1, 1972, to May 31, 1973, the Air Force Academy notified Region 8 that Transport Tire was continuing to deliver tires of insufficient skid depth and to make late pickups and late deliveries. Lowry and Minot Air Force bases also complained of late deliveries under this contract, and at one point Transport Tire requested that it be relieved from the performance of its contract with the latter base. Due to these continuing problems a team, whose members included personnel from the United States Automotive Tank Command (TACOM), inspected the Transport Tire facilities in late September 1972. Transport Tire's facilities were found to be ill-lighted, disorderly, and in need of cleaning, and some of the tools and machinery used by Transport Tire were found to be dirty or antiquated. The contractor's quality assurance procedures were also felt to be inadequate. During this inspection the president of Transport Tire indicated that he had investigated the skid depth deficiency allegation, had discovered a badly worn matrix to be the probable cause of the problem, and had now acquired matrices which would meet the skid depth specifications. Because of this, the investigation team determined Transport Tire to be responsible, although correction of the above-noted shortcomings was requested.

Notwithstanding the assurances that the skid depth deficiencies would be corrected, deficient skid depths were again reported by the Air Force Academy on various tires delivered by the contractor. Consequently, in November 1972 the Air Force Academy discontinued using the services of Transport Tire.

Sporadic late deliveries continued, these occurring with Minot and Lowry Air Force bases. The contractor was warned that these late deliveries were unacceptable. In April of 1973, prior the letting of new yearly contracts for the work, a preaward survey was conducted of Transport Tire facilities by representatives of GSA and TACOM. It was found that most of the problems found under the prior investigation, except for the shallow tread problem reported by the Air Force Academy, had not been corrected. Other than noting these facts, no finding was made by the preaward survey team as to the advisability or not of making future awards to Transport Tire for this work.

On April 27, 1973, invitation for bids No. GS-08-DP(P)-10038 was issued by Region 8 for the retreading and repairing of pneumatic tires. Transport Tire submitted a bid for the work. One portion of the Transport Tire bid was rejected because its bid price was determined to be unreasonable. The bidder was rejected for other portions of the work because its prices thereon were conditioned upon an extension of the delivery schedule beyond the time period required by the invitation. On those portions of the invitation on which Transport Tire had submitted the low, reasonable, and

responsive bid Transport Tire was rejected due to the contracting officer's determination that the bidder was nonresponsive because of its showing of a lack of tenacity and perseverance on its prior two contracts

It is requested that our Office determine that the contracting officer had no basis for finding Transport Tire nonresponsive and that the finding, consequently, was arbitrary, capricious, and of no effect. First, it is urged that while Transport Tire performed tire services for eight installations in Region 8 for a total dollar volume in excess of \$120,000, complaints were received upon only a miniscule amount of that volume. Secondly, it is contended that the shortcomings in Transport Tire facilities found during the two inspections are issues that go to the issue of Transport Tire's ability to perform the work and, consequently, were for final consideration by the Small Business Administration (SBA). While SBA was notified by letter of June 16, 1973, of the decision to reject Transport Tire on the basis noted, a decision with which SBA was not particularly in agreement, effective consideration by SBA was avoided by the contracting officer's decision to make awards due to an urgent need for the services, pursuant to section 1-1.708-2 (a)(5)(vi) of the Federal Procurement Regulations (FPR).

Upon review of the record which was before the contracting officer at the time of the determination, we cannot say that the finding that Transport Tire lacked tenacity and perseverance was arbitrary, capricious or based upon insubstantial evidence. Although invoices have now been submitted which tend to indicate that the dollar volume of business conducted under the 1972-73 contract was approximately \$120,000, at the time the contracting officer made his determination of nonresponsibility this fact was not a matter of record. Instead, at that time information required to be submitted by Transport Tire to Region 8 showed the value of the work performed under the contract to be only \$15,273. Considering this smaller dollar amount, the difficulties encountered by some purchasing installations under the contract, and the apparent unwillingness of Transport Tire to correct certain deficiencies in its facilities, correction of which it was felt would improve contract performance, we, as noted, will not take issue with the determination. We have consistently held that poor business practices, such as demonstrated here, go to questions concerning tenacity and perseverance rather than considerations of capacity and credit. B-161806, February 26, 1968, and cases cited therein.

As regards the issuance of the certificate of urgency which allowed awards to be made without waiting for SBA to submit its views, we believe the record supports such a finding and the requirements of the regulations have been met. It would appear from the record that a decision finding Transport Tire nonresponsible was not made until sometime after bid opening. While the determination of nonresponsibility is undated, it would appear that by the time all the necessary information had been assembled and the necessary discussion made with persons affected by the Transport Tire contract the Government was faced with the problem of having no contract under which the various installations could satisfy their needs. Inasmuch as to have extended the 1972-73 contract while the matter was submitted to and considered by SBA would have meant continuance of Transport Tire's services, which the contracting officer had found to be unacceptable, and inasmuch as even should SBA have disagreed with the determination regarding lack of tenacity and perseverance the finding of SBA would not necessarily have been binding on him (see section 1-1.708-2(a)(5)(v) of FPR), we can have no legal objection to the actions taken by the contracting officer in this matter.

Accordingly, the protest is denied.

Deputy


Comptroller General
of the United States